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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,004	01/08/2002	Keith Fomeck	72846	7400

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



# Office Action Summary

Application No.  
10/043,004

Applicant(s)  
Forneck et al.

Examiner  
Lien Tran

Art Unit  
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan. 21, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:



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1. Claims 1-14 and 23-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Durst in view of Kuechle et al, Atwell and Rudel.

Durst discloses ready- to-eat baked goods which are of high quality and are shelf stable for up to one year. The baked goods include bread and has a water activity of less than .85. The dough comprises the ingredients in the amounts as listed on column 3 lines 40-55. At least 5% glycerine is added to control the water activity. (See columns 3-5)

Durst does not disclose adding corn syrup solids, cysteine hydrochloride, mono and di glycerides and the specific preservatives such as calcium propionate, potassium sorbate, fumeric acid.

Rudel teaches to add corn syrup solid to bread product as a sweetening agent. (See columns 9-10).

Kuechle et al teach to corn syrup is a humectant and can be used in combination with glycerin to control the water activity.

Atwell discloses a dough in which a dough relaxer may be added to facilitate sheeting of the dough, emulsifier is added to influence texture and homogeneity of the dough mixture to increase dough stability, to improve eating quality and to prolong palatability. Useful emulsifying agents include mono and di glyceride. (see columns 4-5)

It would have been obvious to one skilled in the art at the time of the invention to make the bread disclosed by Durst into any shape and size to make different varieties of bread. Flat bread is just bread with a flat shape; it would have been obvious to form the dough into a flat



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shape if it is desired to make a flat bread. It would also have been obvious to make the bread in any size desired depending on how small or large a loaf is desired. It would also have been obvious to use corn syrup solids in the Durst bread because they disclose adding a sweetening agent and corn syrup solids is a well known sweetening agent that is used in bread dough as shown by Rudel. It would also have been obvious to add corn syrup solid to obtain the desired water activity as Kuechle et al teach corn syrup can be used in combination with glycerin to control the water activity. All the ingredients claimed and not disclosed by Durst are well known in the art as shown by the prior art. These ingredients are added to dough to obtain specific functions and properties. It would also have been obvious to one skilled in the art at the time of the invention to add a dough relaxer and emulsifiers to the dough disclose by Durst for their art-recognized functions as taught by the prior art. The amounts of ingredients used in a dough recipe vary depending on the type of bread. It would have been within the skilled of one in the art to determine the amounts through routine experimentation depending on the type of bread made and the taste and texture desired. Additives such as calcium propionate, potassium sorbate for preservative, acid and seasonings as taste modifier are well known in the art; it would have been obvious to add the additives for their art-recognized functions. Durst teaches to add preservatives and flavoring. As to the product-by-process claims, determination of patentability in “product-by-process” claims is based on the product itself, even though such claims are limited and defined by process (see *In re Thorpe* 227 USPQ 964).



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2. Claims 15-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durst in view of Rudel, Kuechle et al, Atwell, Snyder and Rozzano.

Durst discloses ready- to-eat baked goods which are of high quality and are shelf stable for up to one year. The baked goods include bread and has a water activity of less than .85. The dough comprises the ingredients in the amounts as listed on column 3 lines 40-55. At least 5% glycerine is added to control the water activity. (See columns 3-5)

Durst does not disclose packaging the bread into a kit with different food components, packaging in hermetically sealed individual packaged under inert atmosphere, adding corn syrup solids, cysteine hydrochloride, mono and di glycerides and the specific preservatives such as calcium propionate, potassium sorbate, fumeric acid.

Rudel teaches to add corn syrup solid to bread product as a sweetening agent. (See columns 9-10).

Kuechle et al teach to corn syrup is a humectant and can be used in combination with glycerin to control the water activity.

Atwell discloses a dough in which a dough relaxer may be added to facilitate sheeting of the dough, emulsifier is added to influence texture and homogeneity of the dough mixture to increase dough stability, to improve eating quality and to prolong palatability. Useful emulsifying agents include mono and di glyceride. (see columns 4-5)

Rozzano discloses a compartmentalized food package. The package includes a container and sealed cover which have a plurality of individually sealed chambers for foodstuff. The



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container includes a top flange or surface which extends about the individual chambers onto which the removable cover is secured by an adhesive or heat sealing. A plurality of distinct foodstuffs may be individually sealed in the chambers thereby maintaining each food flavor, aroma and desired moisture content. (See col. 2)

Snyder discloses a cereal kit in which the different food components are sealed in individual packages and placed in a single container which is covered. ( see the abstract and figure 1)

It would have been obvious to one skilled in the art to package the Durst bread product with other food components in the container of Rozzano to make a convenient food kit. Such convenient food kit is well known in the art and one example is shown by Snyder. It would have been obvious to package any other food components in the container depending on the taste desired. For example, it would have been obvious to package the bread with a meat and seasoning or condiment because bread is commonly consumed with a meat and meat is usually seasoned to enhance the flavor. The types of food to be included vary depending on the taste and flavor wanted for a particular kit. It would also have been obvious to individually seal the different components such as taught by Snyder to maintain the freshness of the different components. It would also have been obvious to use modified packaging such as flushing with inert gas or vacuum packaging to increase the shelf stability of the product. This concept is well known in the art. It would also have been obvious to one skilled in the art at the time of the invention to make the bread disclosed by Durst into any shape and size to make different varieties



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of bread. Flat bread is just bread with a flat shape; it would have been obvious to form the dough into a flat shape if it is desired to make a flat bread. It would also have been obvious to make the bread in any size desired depending on how small or large a loaf is desired. It would also have been obvious to use corn syrup solids in the Durst bread because they disclose adding a sweetening agent and corn syrup solids is a well known sweetening agent that is used in bread dough as shown by Rudel. It would also have been obvious to add corn syrup solid to obtain the desired water activity as Kuechle et al teach corn syrup can be used in combination with glycerin to control the water activity. All the ingredients claimed and not disclosed by Durst are well known in the art as shown by the prior art. These ingredients are added to dough to obtain specific functions and properties. It would also have been obvious to one skilled in the art at the time of the invention to add a dough relaxer and emulsifiers to the dough disclose by Durst for their art-recognized functions as taught by the prior art. The amounts of ingredients used in a dough recipe vary depending on the type of bread. It would have been within the skilled of one in the art to determine the amounts through routine experimentation depending on the type of bread made and the taste and texture desired. Additives such as calcium propionate, potassium sorbate for preservative, acid and seasonings as taste modifier are well known in the art; it would have been obvious to add the additives for their art-recognized functions. Durst teaches to add preservatives and flavoring. As to the product-by-process claims, determination of patentability in “product-by-process” claims is based on the product itself, even though such claims are limited and defined by process (see *In re Thorpe* 227 USPQ 964).



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3. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

April 6, 2003

  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*